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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,611	07/11/2003	Paul A. Wilks JR.	351.7815USU	2909

7590 09/23/2005

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EXAMINER

ROSENBERGER, RICHARD A

ART UNIT PAPER NUMBER

2877

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/617,611	WILKS ET AL.	
	Examiner	Art Unit	
	Richard A. Rosenberger	2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/7/2003</u> | 6) <input type="checkbox"/> Other: ____ |

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4 and 8-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4 and 8 claims angular relationships between the prism, source and detector, but the relationship is not well defined in the claims as there is no point defined from which the angle is being measured, and thus it is unclear what the scope of the claim is or is intended to be. Claims 9-12, dependent from claim 8, inherit this rejection; none of these claims contain material which clarifies the relationship.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coats et al (US 2004/0201835).

See figures 5A and 5C in particular. There is a prism (17) with a slot (19) which is perpendicular to a radiation path [claims 1, 5, 7]. It is at least obvious to place the prism and the slot into a process stream to make the measurements of the fluid in the process stream in the

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same manner as is being made in the Coates et al reference. As at least suggested by figures 5A and 5C, the prism can have a truncated cone shape [claims 2, 6], other prism shapes which will similarly direct the light through the slot would have been obvious as the exact shape of the prism, so long as it directs the light from the source through the slot and to the detector, is not critical and would not be understood by those in the art to be critical to the system of the reference.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuchimoto et al (JA 0037552) in view of Berman et al (US 6,421,548).

Tsuchimoto et al shows, in figure 2, a sensor with an optical element 9 with a prism (at the end of the optical element by the reference numerals 14) which causes the light to be internally reflected at least twice through the optical element. Similarly, see figure 1D of Berman et al, which shows a similar reflecting means (115) in contact with an optical element (113). It would have need obvious to use such known measurement means in process streams to make measurements in the known manner of these types of instruments.

6. There appears to be allowable subject matter in the disclosure as it relates to the subject matter of figures 5, 6 and 7, which is generally the intended subject matter of claims 3-4, and 8-12. See, however, the rejection under 35 USC 112 above. It appears that claims that clearly set forth this subject matter with sufficient specificity would be allowable.

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7. Gale (3,164,663) and Young (3,733,130) shows systems in which prismatic elements have slots to make absorption measurements of fluids.

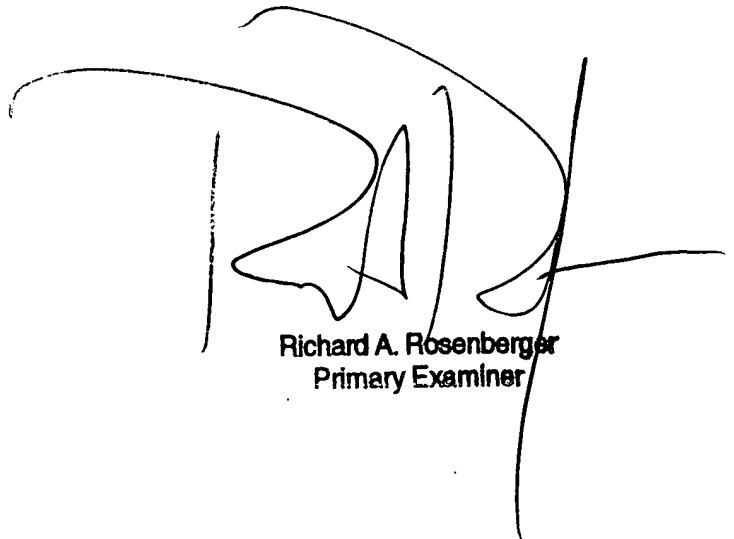
Harrick (US 3,425,602) shows an internal reflection element with multiple reflections.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A Rosenberger whose telephone number is (571) 272-2428. The examiner can normally be reached on Monday through Friday during the hours of 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

R. A. Rosenberger
19 September 2005



Richard A. Rosenberger
Primary Examiner